THE HON'BLE SRI JUSTICE C.V. RAMULU

Thursday, 4th day of October,2007

W.P.No.14112 of 2006

Between:-

Prof (Dr) H.N.Suresh & others … Petitioners

and

The Union of India,
Th: The Cabinet Secretary,
Government of India,
New Delhi-11 and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.14112 of 2006

ORDER:

Initially, the Writ Petition was filed seeking a Mandamus to declare the Proceedings of the 2nd respondent dated 23-2-2006 Para 2(b) denying the benefit of superannuation at the age of 62 years (and all other benefits/allowances/facilities/amenities accruing from MHRD Policy letter dated 09.10.1998) to all Academicians working in respondents 12 to 14-Colleges (including the petitioners herein) as stipulated by the Government of India in terms of MHRD Department of Education letter No.37-104/95-TS.II, dated 9-10-1998 as arbitrary and illegal. However, thereafter, a petition in W.P.M.P.No.23048 of 2007 was filed seeking amendment of the prayer in the Writ Petition as under:

> "declare the Proceedings of the 2nd respondent herein dated 23-2-2006 Para 2(b) denying the benefit of superannuation at the age of 62 years (and all other benefits/allowances/facilities/amenities accruing from MHRD Policy letter dated 09.10.1998) to all Academicians working in respondents 12 to 14 (including the petitioners herein) as stipulated by the Government of India in terms of MHRD Department of Education letter No.37-104/95-TS.II, dated 9-10-1998 as being in violation of the Fundamental Rights of these Academicians guaranteed under Articles 14 & 16 of the Constitution of India as also offending Right to Life guaranteed under Article 21 of the Constitution of India and thereby ULTRA VIRES.
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> (b) to direct respondent No.7 to take necessary steps to enforce the provisions of the AICTE Act to Respondent No.12

institution by directing respondent No.12 to implement the guidelines of the AICTE with respect to service conditions to the petitioners and consequentially direct the Respondent No.12 to fully implement the recommendations of the AICTE as accepted by Central Government in communication dt: 9-10-1998 in F.37-104/95-TS.II issued by the Government of India, Ministry of Human Resources (Department of Education) and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

Petitioners are all working as Professors in the Military College of Electronics & Mechanical Engineering (MCEME), Secunderabad, which is represented by its Commandant – respondent No.12 herein. It is their case that their service conditions are governed as per the guidelines of All India Council for Technical Education (AICTE). Therefore, they are entitled to continue in service upto the age of 62 years, whereas, the respondents are denying the benefit of superannuation at the age of 62 years.

The following important questions of law arise for consideration:

(1) Whether the petitioners can maintain a Writ Petition seeking such a relief of extending the benefit of age of superannuation at 62 years as per the norms of AICTE ?

(2) Whether the petitioners can seek a direction against AICTE to enforce its Rules in the 12th respondent-institution, under the control of the 2nd respondent, and whether the 2nd respondent is bound by the guidelines of AICTE ?

Maintainability:

It is the contention of the learned counsel for the petitioners that a Writ Petition of this nature is maintainable, though the petitioners are Civilians working in MCEME at Secunderabad, since they are seeking enforcement of guidelines, issued under the provisions of the All India Council for Technical Education Act,1987, by the 2nd respondent. In support of his contention, the learned counsel relied upon the decision in **L. CHANDRA KUMAR v. UNION OF INDIA**[1] and drawn attention of the Court to paragraph-93 thereof, which reads as under:

> **"93.** Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned."

On the other hand, learned Assistant Solicitor General of India appearing for the respondents strenuously contended that the very Writ Petition is not maintainable. Petitioners belong to Civilian Department of Army and they are not amenable to the jurisdiction of this Court. The disputes relating to their service conditions are dealt with by the Central Administrative Tribunal and a reading of Sections 14, 15 and 28 of the Administrative Tribunals Act,1985 makes the same clear. In this regard, learned Assistant Solicitor General placed reliance upon the same Judgment in **L. CHANDRA KUMAR**'s case (1 supra) wherein it was held that the Tribunals created under Articles 323-A and 323-B of the Constitution are possessed of competence to test the constitutional validity of statutory provisions and rules and, therefore, it

is not open to the litigants to directly approach this Court overlooking the jurisdiction of the Tribunal. The College – respondent No.12 – under the control of the 2nd respondent is affiliated to JNTU. It is contended that over the affiliated Colleges of Jawaharlal Nehru Technological University, AICTE does not have any control. The Administrative Tribunals Act came to be enacted in view of Article 323-A of the Constitution conferring the jurisdiction as available to the High Court insofar as service matters of the Central Government employees are concerned. In this regard, the learned Assistant Solicitor General has relied upon the judgments reported in **UNION OF INDIA v. DEEP CHAND PANDEY**[2] and **M.R. PENGHAL v. UNION OF INDIA**[3].

In **UNION OF INDIA v. DEEP CHAND PANDEY** (2 supra), the Apex Court held as under:

> "5. The scope of Article 323-A permitting the Parliament to legislate on the subject covered therein is, having regard to the language, very wide, and by enacting 1985 Act this power has been exercised in almost full measure. An examination of Section 14 and Section 3(q) clearly indicates that the Act covers a very wide field, and there is nothing to suggest that the provisions dealing with the jurisdiction of the Tribunal should receive a narrow interpretation. This is also supported by the clarification offered by the then Minister for Law, who was piloting the Bill, while replying to the demand for the further enumeration of the conditions of service in Sections 14 and 15. He stated that (as recorded in the proceedings for 9th to 11th November, 1976 of the Rajya Sabha Debate) he believed the 'conditions of service' to be of such a wide expression that an attempt of enumeration would be "really so dangerous from the point of view of the employees themselves that by exclusion you say that the others are not".

In **M.R. PENGHAL v. UNION OF INDIA** (3 supra), it was held by the Supreme Court as under:

> "7. The question that arises for consideration is, whether the High Court or the Central Administrative Tribunal has jurisdiction to entertain the applications of the appellant. This question depends upon the status of the appellant viz., whether he is an army personnel

or a civilian posted on deputation in the Army Service.

8. As stated above, although the appellant was selected by the Postal Department for appointment to the post of clerk, but he could not be given any appointment due to want of vacancy in the unit of his choice. Under such circumstances, the appellant was offered an appointment to work as a clerk in the Army Postal Service on the condition that he would remain a civilian employee on deputation in the Army. The appellant accepted the aforesaid offer and agreed to the conditions that he would revert to the civil appointment in Posts and Telegraphs Department on his release from the Indian Army Postal Service. With these conditions, the appellant continued to serve in the Army as a permanent employee of the Posts and Telegraphs Department on deputation and was promoted up to the rank of a Major in the Indian Army. However, the appellant was only given a temporary Commission and he worked as such till the date when his relinquishment was ordered. The aforesaid facts clearly demonstrate that the appellant has a lien with the Posts and Telegraphs Department working on deputation in the Indian Army Postal Service and at no point of time the appellant became a full-fledged Army personnel. Since the appellant was not a member of Armed Forces and continued to work as a civilian on deputation to the Army Postal Service, his case was covered under Section 14(1)(a) of the Administrative Tribunals Act. In that view of the matter, the High Court was right in rejecting the writ petition filed by the appellant, whereas the Central Administrative Tribunal erroneously accepted the claim of the appellant that he is an Army personnel. We, therefore, uphold the judgment and order of the High Court dismissing the writ petition filed by the appellant. Since the appellant while holding civil post was working in the Army Postal Service on deputation, the Central Administrative Tribunal had jurisdiction to entertain and decide the Original Application filed by the appellant. We accordingly set aside the order dated 31-1-1997 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, and remand the case to it to decide expeditiously the Original Application No. 1647/1996 of the appellant, on merits."

The judgment in **L.CHANDRA KUMAR**'s case (1 supra) has no relevance to the facts of this case. In the present case, the plea of the petitioners is that since the AICTE Act and the guidelines issued thereunder are applicable to the Colleges under the control of the 2nd respondent, AICTE is obligated to enforce the AICTE Act and the guidelines issued by it from time to time, against the Colleges under

the control of the 2nd respondent. In other words, petitioners are seeking a direction against the 7th respondent-AICTE to direct respondent No.12-College, which is under the control of the 2nd respondent, to enforce the guidelines issued by it from time to time. Petitioners are not claiming any right, which is accrued to them under any law for the time being in force or under the service conditions already existing. Unless and until the petitioners complain that respondent No.12 is not acting as per the service conditions already existing, probably the Tribunal may not have jurisdiction to deal with the matter and the Tribunal cannot order the AICTE to implement its guidelines as are applicable to other Engineering Colleges in the country to that of the College of the 12th respondent, under the control of the 2nd respondent. Therefore, I am of the opinion that since the petitioners sought a direction to AICTE for enforcing its guidelines by the 2nd respondent, probably, the service Tribunal like the Central Administrative Tribunal may not be able to deal with such questions. Therefore, the petitioners have approached this Court directly. In the peculiar facts and circumstances of this case, since the petitioners sought for enforcement of AICTE guidelines in respect of the 12th respondent-College under the control of the 2nd respondent, the Writ Petition is maintainable. In view of this, the decisions relied upon by the learned Asst.Solicitor General of India have no relevance to the facts of this case.

Binding effect of AICTE Rules

It is the case of the petitioners that AICTE Act is applicable to the 12th respondent College and therefore, the guidelines issued by it are binding on the 2nd respondent under whose control the 12th

respondent-College is functioning. As per the definitions Under Section 2(g) and 2(h), which read as under:

> "(g) "technical education" means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notifica- tion in the Official Gazette, declare;
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> (h) "technical institution" means an institution, not being a University, which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions"

the College is imparting technical education and offers courses and programmes on technical education. The very Act is made to provide for establishment of an All India Council Technical Education with a view to promote planning and coordinate development throughout the country, the promotion of qualitative improvement of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith. The 12th respondent-College is also conferring degrees through JNTU. Even the instructions issued by AICTE are binding on the JNTU. Further, Section 10 of the Act contemplates the powers and functions of the Council. Whereas, the Ministry of Defence, Government of India, in its letter No.15(1)/2006/D(0-II), dated 23-2-2006, on the representation of the petitioners, replied that the request of the petitioners for enhancement of retirement age of Professorial staff from 60 to 62 years was considered and it was decided that their service conditions are governed under the Rules of General Central Service Group 'A' Gazetted Non-Ministerial and there is no provision in the Central

Government Employees Rules to enhance the age of superannuation beyond 60 years and all employees in the Ministry of Defence will superannuate at the age of 60 years. Further, letter No.F.37-104/95-TS.II, dated 9-10-1998 has been addressed by the Deputy Secretary, Ministry of Human Resource Development (Department of Education), Government of India, New Delhi, to the Secretaries dealing with Technical Education of all States/Union Territories, regarding the revision of pay scales of teachers in Engineering Colleges and other degree level technical institutions including Architecture, Town Planning, Pharmacy and Applied Arts and Crafts Institution following the revision of pay scales of Central Government employees on the recommendations of Fifth Central Pay Commission. In the said letter, at paragraph-5, it is stated that "the payment of Central assistance for implementation of the Scheme is also subject to the condition that the entire scheme of revision of pay scales, together with all the conditions to be laid down in this regard by the AICTE is implemented by the State Governments as a composite scheme without any modification except to the date of implementation and scales of pay as indicated above". Further, it is stated that it shall be necessary for the technical institutions to make necessary changes in their statutes, Memorandum of Associations, Rules/Scheme, Regulations, Bye-laws etc., as the case may be, to incorporate the provisions of the Scheme. At paragraph-9, it is stated that the scheme applies to teachers in all degree level technical institutions and colleges, University Faculties/Departments/Institutions, which are covered under the AICTE Act. Further, learned counsel for the petitioners has invited the attention of the Court to the Annexure to the said letter dated 9-10-1998, wherein it is stated that Teachers in centrally funded degree level technical institutions will be entitled to Dearness Allowance,

House Rent Allowance, Transport Allowance, City Compensatory Allowance and other allowances at the same rates and dates as applicable to the Central Government employees. Insofar as the age of superannuation is concerned, it is stated that the same would be 62 years in respect of teachers in degree level technical institutions and thereafter no extension in service will be given, but the Institute may re-employ a superannuated teacher upto 65 years in accordance with the existing provisions in the Statutes/Memorandum of Association and Rules/Scheme, Regulations and Bye-laws of the Institute, as the case may be.

The age of superannuation of 62 years was also made applicable to Registrar, Librarians, Physical Education Personnel, Controllers of Examinations, Finance Officers and such other employees of the Technical Institutions, who are treated on par with the teachers and whose age of superannuation was 60 years. It is also stated that for every upward movement, a selection process would be evolved, for which appropriate guidelines would be laid down by AICTE in consultation with the Government of India. At para 13.0 of the AICTE Notification on Revision of Pay Scales and Associated Terms and Conditions of Service of Teachers, Librarians and Physical Education Personnel of Degree Level Technical Institutions, it is stated that their age of superannuation would be 62 years and thereafter, no extension of service shall be given. However, an Institute may re-employ a superannuated teacher upto 65 years of age in accordance with the existing provisions in the Statutes/Memorandum of Association and Rules/Schemes, Regulations and Bye-laws of the Institute, as the case may be. Further, the age of superannuation of Registrar, Librarians, Physical Education Personnel, Controllers of Examinations, Finance Officers and such other employees of technical

institutions as are treated at par with the teachers and whose age of superannuation was 60 years, will be 62 years; however, there is no provision of re-employment for such category of staff. Further, the 1st petitioner addressed a letter dated 18-2-2005 to the Secretary, Ministry of Defence, Government of India, New Delhi, requesting to extend the age of superannuation to 62 years as per the guidelines applicable to the University Teachers as prescribed by AICTE.

Placing reliance on all the aforementioned letters, learned counsel for the petitioners contended that MCEME is also governed by the AICTE Act and the guidelines issued by the AICTE from time to time. Though in the various Circulars referred to above, pay scales etc., as applicable to the Teachers working in various Engineering Colleges governed by AICTE Rules, are extended, the age of superannuation is not extended from 60 to 62 years insofar as MCEME is concerned. In fact, Defence is a part of Government of India and, therefore, any instructions issued by the Ministry of Human Resources Development (Department of Education), Government of India are also equally applicable to MCEME in the country.

Learned counsel for the petitioners further strenuously contended that it is the pre-requisite condition that institutions imparting technical education have to get approval from AICTE. Respondent No.12 is a technical institution as defined under Section 2(h) of AICTE Act,1987. With respect to the matters, which are within the domain of the 7th respondent, it is for this Court, which has jurisdiction to deal with the said aspect and the question whether the guidelines issued under AICTE Act are binding on 12th respondent, cannot be adjudicated by Central Administrative Tribunal. Further, the relief sought for in this Writ Petition is not confined to the writ petitioners only but a direction is sought to grant the relief to all the Academicians, who are imparting

education in respondents 12 to 14 institutions. Ministry of Defence, Government of India through its letter dated 10-7-1986 addressed to the Chief of Army Staff, New Delhi, while conveying the sanction of the President of India to the revision of pay scales of civilian teaching staff in the technical institutions of the Army (Respondents 12 to 14) has also clearly instructed that the qualifications and other conditions laid down by the AICTE for adoption of AICTE scales should be applicable to the technical institutions of the Army also. This itself is clear that the Ministry of Defence has directed respondents 12 to 14 to follow AICTE norms. Therefore, the contention of the respondents that AICTE norms are not applicable is unsustainable.

Learned Asst.Solicitor General of India contended that the letter dated 31-8-1999 issued by the Government of India, Ministry of Defence would indicate that consequent upon further revision of AICTE pay scales as notified in the Human Resource Development (Department of Education) letter dated 19-10-1998, the pay scales have been extended. Insofar as the age of superannuation is concerned, petitioners are purely governed by the service conditions as are applicable to the Central Government employees. Therefore, it was categorically stated in the said letter dated 31-8-1999 addressed to the Chief of the Army Staff that in relation to all other matters not specifically included therein, the civilian teaching staff in the teaching establishments will be governed by the Rules and Regulations applicable to Defence Civilians in general. Thus, merely because the pay scales are made applicable as decided by the AICTE, that does not mean that the petitioners are also entitled for the extension of age of superannuation as contemplated by AICTE Act or the guidelines issued from time to time by the Ministry of Human Resource Development. In fact, as regards the age of suprannuation, it was

informed by letter No.15(1)/2006/D(O-II), dated 23-2-2006 of the Deputy Secretary, Ministry of Defence, Government of India, New Delhi, that the service conditions of the petitioners are governed under the Rules of General Central Service Group-A Gazetted Non-Ministerial. There is no provision in the Central Government Employees Rules to enhance the age of superannuation beyond 60 years and all employees in the Ministry of Defence will superannuate at the age of 60 years. The guidelines issued under AICTE Act are not mandatory, but only recommendatory and whenever pay scales of teaching staff were revised by AICTE, the same were made applicable, but that does not mean that all the Rules made by AICTE are automatically applicable to the case of the petitioners including the extension of age of superannuation from 60 to 62 years. In fact, under similar circumstances, O.A.No.83 of 2001 was filed before the Central Administrative Tribunal, Hyderabad Bench by P.V. Jagadish and others, who are working as Lecturers in the same MCEME at Secunderabad seeking enhancement of age of superannuation to 62 years. The Tribunal has elaborately considered this aspect and held that the documents produced before it show that the Ministry of Defence considers the recommendations made and takes a decision for implementation of the acceptable recommendations and issues orders after the same were approved by the President of India. As early as on 15-4-1994 while communicating the revision of pay scales of civilian teaching posts in the three training establishments with effect from 1-4-1986, it has been specified that AICTE packages insofar as the pay, career progression and qualifications are concerned, will be adopted by the institutions and that all other aspects will continue to be governed as hitherto in force. Ultimately, it was held that the impugned Order dated 28-4-2000 was neither arbitrary

nor illegal. Thus, the learned Assistant Solicitor General has strenuously contended that unless and until the guidelines issued by AICTE are adopted and approved by the President of India, they are not binding on respondents 12 to 14. They are only recommendatory and as far as possible, the same were adopted insofar as they are not inconsistent with the general service conditions of the Central Government Defence Civilian Officers, which are applicable to the petitioners. The General Service Conditions contemplate retirement of an Officer at the age of 60 years. Therefore, the case of petitioners cannot have a special consideration in further enhancing the age of superannuation from 60 to 62 years. In support of the said contentions, the decisions in **SURESHCHANDRA SINGH v. FERTILIZERS CORPORATION OF INDIA LTD.**[4] and **T.P. GEORGE v. STATE OF KERALA**[5] have been relied upon.

In **SURESHCHANDRA SINGH**'s case (4 supra), while dealing with the issue of applicability of enhancement of retirement age to 62 years to the employees of public sector enterprises on par with the Central Government employees, it was held as under:

> "**7.** The appellants assail the decision of the Board on the ground of violation of principles of equality. It is alleged that the Board-level employees were allowed to continue in service till the age of sixty and employees like the appellants who were below the Board level were forced to retire at the age of fifty-eight. In reply the respondents submitted that the Board-level employees could not be equated and compared with the other employees. Wholetime directors, who are two in numbers, are directly appointed by the President of India for a fixed term of five years that could be reviewed even earlier; and that other members of the Board are government servants and are nominees or representatives from various Ministries and are appointed by the President of India for a term of three years. In these circumstances we find that the Board of Directors themselves form a different class and cannot be compared with other employees in regard to conditions of service applicable to them. Allegation of discrimination is also raised by the appellants *vis*

a vis employees of other corporations. Each public sector undertaking is an independent body/entity and is free to have its own service conditions as per law. However, all employees in FCIL who are working in its various units and divisions retire at the age of fifty-eight as per the relevant rules; and that even the future employees will retire at the age of fifty-eight. We also find that the employees of different corporations could not be treated alike since every corporation will have to take into account its separate circumstances so as to formulate its policy and consequently, the argument that there is discrimination of appellants *vis a vis* employees of other corporations also cannot be accepted. ……..”

In **T.P. GEORGE**’s case (5 supra), the Apex Court observed as under:

> “**6.** Although the appeals and the writ petitions, in our view, cannot succeed, we do feel that age of retirement fixed at 55 years in the case of teachers of affiliated colleges is too low. It is only after a teacher acquires several years of teaching experience that he really becomes adept at his job and it is unfortunate if the students have to lose the benefit of his experience by reason of an unduly early age of retirement. However, it is not for the Court to prescribe the correct age of retirement but that is a policy function requiring considerable expertise which can properly be done by the State Government or the State Legislature or the Universities concerned. We hope that some time in near future, the State Government will be able to consider the question and determine the age of retirement as it best thinks fit.”

Whereas, learned counsel for the petitioners relied upon a Judgment of the Delhi High Court in **SANJIV LOCHAN GUPTA v. GOVERNMENT OF THE NATIONAL CAPITAL TERRITORY OF DELHI**[6] wherein it was observed that in the matter of laying down norms and standards for courses as also the qualification for the staff, which would include teaching staff, the directions issued by AICTE shall be binding. Learned counsel also relied upon the decision in **JAYA GOKUL EDUCATION TRUST v. COMMISSIONER AND SECRETARY TO GOVT., HIGHER EDUCATION DEPARTMENT**[7]

wherein it was held that the University could not impose any conditions inconsistent with the AICTE Act or its Regulations imposed by AICTE, has no relevance to the facts of this case since it dealt with the aspect of granting of affiliation. The judgment in **BHARATHIDASAN UNIVERSITY v. ALL INDIA COUNCIL FOR TECHNICAL EDUCATION**[8] also has no applications to the facts of this case, since the question that arose for consideration therein was, whether the appellant-University should seek approval of AICTE to start a department for imparting a course or programme in technical education or a technical institution as an adjunct to the University itself to conduct technical courses of its choice and selection. The other judgments relied upon by the learned counsel for the petitioners also have no relevance for the reason that MCEME is a class by itself and the petitioners cannot complain that their service conditions should be treated on par with the teachers in other Engineering Colleges in the country, as a matter of right.

Respondent No.7 - AICTE filed a detailed counter stating the provisions of MHRD letter F.37-104/95-TS.11, dated 9-10-1998 and the norms and standards recommended by AICTE from time to time including other service conditions ought to be made applicable to the teachers in the degree level technical institutions under the Ministry of Defence. The technical institutions run by the Ministry of Defence should be headed by competent personnel as recommended by AICTE. Academicians of the highest excellence in the respective fields discuss the subject and after the process as contemplated under the AICTE Act is over, the norms, rules and regulations are enforced. The workload prescribed by AICTE for teachers in technical institutions is binding on the respondents. Except saying this, no assertion is made that the teachers working in respondents 12 to 14-

Colleges are entitled automatically for enhancement of age of superannuation from 60 to 62 years.

From the letters relied upon by the learned counsel for the petitioners and the learned Assistant Solicitor General and also the counter filed by the 7th respondent, one thing is clear that in many areas, such as, qualifications, revision of pay scales etc., as decided by AICTE, the Defence Department had adopted the same for the purpose of recruitment of its teachers in MCEME Colleges; may be, to keep in consonance with the standards and excellence of the engineering students with that of the other Colleges in the country and also to follow the doctrine of 'equal pay for equal work'. But, that itself does not mean that the petitioners are automatically entitled for enhancement of age of superannuation from 60 to 62 years. AICTE is only a recommendatory body and its recommendations were communicated by the Ministry of Human Resource Development (Department of Education) to the Defence Ministry for adoption in certain areas, such as, fixation of pay and allowances and also qualifications for recruitment to the post of a Teacher in MCEME Colleges etc. Therefore, it cannot be said that AICTE guidelines are binding on respondents 12 to 14 and the petitioners are entitled automatically for enhancement of age of superannuation on par with the teachers working in the technical institutions elsewhere. May be, it is desirable that the 12th respondent also adopts the said policy of enhancing the age of superannuation of teachers from 60 to 62 years; but, this can happen only when appropriate authority adopts and gets approval of the competent authority and not otherwise. However, the discrimination and inequality among the teachers of other technical institutions in the country and the petitioners is conspicuous. May be, it is heart burn of the petitioners that their counterparts in the technical

institutions all over the country are retiring at the age of 62 years in view of AICTE Act and the guidelines issued thereunder, whereas though all the prescribed norms of AICTE for the purpose of recruitment, standards of educational excellence, pay scales etc., are adopted, the age of superannuation was not adopted. However, it is not for this Court to prescribe the correct age of retirement, but that is a policy function requiring considerable expertise, which can properly be done by the appropriate authority. Apart from that, the Defence Colleges are a class by themselves and AICTE guidelines are being adopted by them to maintain certain standards of excellence in education, but that does not mean, all the Rules and guidelines issued by AICTE are automatically applicable to the 12th respondent. Therefore, petitioners are not entitled for any relief in this Writ Petition. The Writ Petition is devoid of any merit and is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

However, this Order will not preclude the respondents from considering the case of the petitioners on par with the teachers working in other educational institutions in the country, who are governed by the AICTE Act and the guidelines issued thereunder, in enhancing the age of superannuation from 60 to 62 years. Further, petitioners are at liberty to file appropriate representation, in this regard and if any such representation is filed, the respondent-Defence Secretary shall consider and dispose of the same as per law.

04-10-2007

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[1] 1997(3) SCC 261
[2] 1992(4) SCC 432
[3] 1998(5) SCC 454

[4] 2004(1) SCC 592
[5] 1992 (3) Supp. SCC 191
[6] 2002 ILR (Delhi) 438
[7] 2000(5) SCC 231
[8] AIR 2001 SC 2861